

<b>Notice of Allowability</b>	Application No.	6	Applicant(s)
	09/434,845		BORDONARO ET AL.
	Examiner	Art Unit	
	Prenell P Jones	2667	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 7/02/2004.
2.  The allowed claim(s) is/are 1,2,4-20,22,23,25-29,31 and 32.
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date 2
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

***Allowable Subject Matter***

1. Claims 1-2, 4-20, 22, 23, 25-29, 31 and 32 are allowed over prior art.
2. The following is a statement of reasons for the indication allowance: Applicant has canceled claims 3, 24 and 33-36 and Applicant has amended claim 1 to include the previously indicated allowable subject matter of previously objected to claim 3. Applicant has amended previously objected to claim 25 to now read as an independent claim.

Although the prior art, Beigi et al, Gruber et al, discloses a method of measuring network performance comprising receiving at a given network address one or more performance probe data packets transmitted from a sender node address, each performance probe data packet having a defined receive time of day field therein modifying the data packet to produce one or more modified performance data packets, RTOP, STOP for calculating transmission delay, echoing probe packet to sender, comparing sequence number to measure data packet loss, predefined UDP, dedicated assurance software residing at nodes for analyzing probe, but they fail to teach/suggest placing the receive-time sub field the RTOD at the responder network address, echoing the packet including the probe field at a respondent network, calculating packet jitter based on STOD and RTOD sub-fields for first/second packet, placing in a send sequence number sub-field/receive sequence number sub-field a relative send timing indicator/relative receive timing indicator respectively, instruction for generating one or more performance probe data packet wherein each performance probe data packet

being dedicated to network performance measurement, analyzing a response from the software resident at the respondent address in accordance with a predefined protocol to which software residing at the respondent address is programmed to respond in a predefined way, instructions executed at the receiver for writing into the timing probe data packet, modifying is performed by further placing in the defined delta time field data substantially representative of a amount of time elapsed while performing modifying and echoing of corresponding performance probe data packet, and last received probe data packet in sequence to produce the modified probe data packet, probe packet generated by sender contains sequence number for the present probe data representing the sequence in which plural ones of such probe packet are sent, sender compares send/receive sequence numbers to determine whether probe data packets were received by responder in sequence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 571-272-3180. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

October 8, 2004

*Chi Pham*  
CHI PHAM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

*10/12/04*